

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:14-CV-133-FL

TIMOTHY P. DANEHY,

Plaintiff,

v.

TIME WARNER CABLE ENTERPRISES
LLC,

Defendant.

**DECLARATION OF
MICHAEL LAWSON**

Michael Lawson, hereby deposes and says:

1. I am over the age of 18 years and am under no disability which would prevent me from testifying competently to the matters set forth herein. I have knowledge of these matters based on my personal knowledge and my review of the regularly maintained business records of my employer, SkyCreek Corporation.

2. Since 2003, I have served as an Account Manager for SkyCreek in Herndon, Virginia. SkyCreek provides inbound and outbound customer interaction voice response ("IVR") technologies to service providers and other companies throughout North America. SkyCreek does not offer telemarketing or advertising services. Rather, SkyCreek concentrates on assisting companies needing to make calls to their customers for particular purposes, such as service-related or billing calls.

3. I have significant experience designing, implementing, and supporting the systems utilized by SkyCreek to serve its customers, and I am very familiar with their operation.

4. Time Warner Cable Inc. ("TWC") has been a client of SkyCreek since 2007. I have managed TWC's account with SkyCreek during this entire period. As the Account

Manager for TWC, I regularly interface with TWC personnel, help identify and meet TWC's service needs, and continually monitor SkyCreek's systems for performance quality. I am TWC's primary point of contact at SkyCreek.

5. Among other services, SkyCreek handles outbound IVR calls for TWC that are related to customer service repair and installation appointments. SkyCreek utilizes its proprietary "Call Notify" IVR platform to manage and place the calls on behalf of TWC. SkyCreek's platform is specifically modified for TWC.

6. None of SkyCreek's systems, including the Call Notify IVR platform, have the capacity to produce or store telephone numbers using a random or sequential number generator or to call telephone numbers without human intervention. SkyCreek has never generated random or sequential numbers for TWC or any other client.

7. SkyCreek's core purpose is to serve clients seeking to communicate with their customers for specific purposes, not communicate with random people. SkyCreek has never attempted to redesign its system so that it would have the capacity to generate random or sequential numbers. I do not know if this is possible.

8. None of SkyCreek's systems, including the Call Notify IVR platform, are "predictive dialers." In other words, none of SkyCreek's systems dial telephone numbers in a manner that 'predicts'—based on complicated algorithms—when a call recipient will answer the telephone and/or when our client's employee would be available to take the call. SkyCreek has never used a predictive dialer for TWC or any other customer.

9. The process by which SkyCreek places service calls to TWC customers through the "Call Notify" IVR platform is as follows:

- a. TWC employee discusses a service issue (such as faulty equipment or service upgrade) with a TWC customer and, if the issue cannot be resolved in that

discussion or otherwise remotely, the TWC employee schedules a service appointment at the customer's home or business and notes the same in TWC's computer system;

- b. TWC's computer system notifies SkyCreek of the service appointment by transmitting the customer's name and telephone number(s) via a secure flat file data feed;
- c. SkyCreek periodically retrieves the service appointment data during each day and its Call Notify IVR platform only places calls to TWC customers that are contained on the list;
- d. Depending on the particular service issue, the purpose of the call could be to confirm, reschedule, or cancel an appointment time; notify a customer that an outage has been cleared; or verify installation or restoration of service; among other purposes; and
- e. Most calling programs allow the customer to elect to be transferred directly to a TWC customer service representative.

10. As with other clients, SkyCreek and TWC set parameters on when and how many times SkyCreek attempts to contact TWC customers. If available, SkyCreek will attempt to contact a TWC customer's alternate telephone number after failing to reach the customer on the primary number. Once SkyCreek connects with the customer, calls stop. In 2013, SkyCreek limited the total number of calls to a TWC customer to six (6) per service appointment. SkyCreek left a voicemail for the TWC customer only on the last or sixth call.

11. SkyCreek keeps a record (for a limited time) of the calls it makes on behalf of its clients, including TWC. SkyCreek does not store telephone numbers or other customer information.

12. I have reviewed SkyCreek's regularly maintained business records reflecting calls to telephone number (704) 421-6235, which I understand are the basis for the above-captioned lawsuit brought by Plaintiff Timothy Danehy.

13. Based on those records, SkyCreek made the following calls to telephone number (704) 421-6235 in order to confirm a TWC service appointment scheduled for November 26, 2013:

11/25/2013

6:49 p.m. (reached device, but no voicemail left)

7:35 p.m. (reached device, but no voicemail left)

8:20 p.m. (call answered, but no action was taken by the recipient)

11/26/2013

8:36 a.m. (reached device, but no voicemail left)

9:31 a.m. (reached device, but no voicemail left)

10:16 a.m. (reached device, and voicemail left)


Each of these six calls were preceded by an attempted call to a primary number associated with the service appointment—(980) 219-XXXX—that resulted in a busy signal and was never answered. Had a call recipient at either number answered a call and responded to the message, the calls would have stopped immediately.

14. The outbound number for these calls (i.e., the number that would appear in the recipient's caller ID) was (877) 566-4892, which is a TWC toll free number dedicated to service appointments.

15. I am not aware of any other calls by SkyCreek to telephone number (704) 421-6235, other than the calls listed in paragraph 13 above.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 13th day of October 2014.


Michael Lawson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and that he served a copy of the foregoing document on the Plaintiff in this action by placing the same in United States Mail, prepaid postage affixed, addressed as follows:

Timothy P. Danehy
P.O. Box 301
Kittrell, NC 27544
Pro Se Plaintiff

This the 14th day of October 2014.

/s/ D.J. O'Brien III
D.J. O'Brien III